pensation to be, in the case of commercial purposes, "not less than the total of eight years' rent" (see section 7(1)(a) of the Act).

I must, however, consider the argument advanced on behalf of the defendants in support of the Board's total award of $21,297. The argument is based on the meaning of section 7(1)(a) of the Act where a tenant, as in this case, has been a tenant of the controlled premises for less than eight years.

It is submitted that on the true construction of section 7(1)(a) the minimum compensation prescribed by the Act in respect of a tenant who has been tenant of the premises for more than eight years would be the total of the eight years' rent paid by him preceding the date of the application but in the case of a tenant who has been tenant for less than eight years the minimum compensation would be the total rent actually paid by him during the period of his tenancy. It is said that such a construction would be giving the words of section 7(1)(a) their natural and ordinary meaning and would also prevent the use of artificial or notional rent to decide the minimum compensation payable. If that construction is correct the applicant having been tenant from 1st January 1967 would have paid up to 30th June 1971 fifty four months rent at $332.33 monthly amounting in all to $17,945.82 which is well over the minimum sum prescribed by section 7(1)(a) and the Board's award ought to stand.

I do not accept this contention for to do so would be to disregard the natural and ordinary meaning of the words of section 7(1)(a) and to import additional words to section 7(1)(a). Quite clearly the Legislature must be deemed to have envisaged that there would be instances where a tenant has been tenant of controlled premises for less than eight years preceding the date of the application who would be entitled to compensation under the Act when one looks at section 9(1)(a) of the Act which enables that a tenant who has not been in continuous occupation of the premises at any time prior to 1st January 1968 shall not be entitled to compensation. The Act came into force on 27th February 1970. It follows that until after 31st December 1975 there may be tenants of controlled premises who would have been in continuous occupation since 1st January 1968 but who would not have paid a total of eight years' rent immediately preceding the date of the application and for such tenants, if the defendants' contention is sound, the Legislature will have failed to spell out precisely the minimum compensation they would be entitled to.

In my judgment to read into the words of section 7(1)(a) the construction put forward by the defendants would be to say that the legislature intended those words to mean that the minimum compensation payable, where a tenant has not been tenant for less than eight years immediately preceding the date of the application, is to be based on the actual rent he has paid *i.e.* the actual period of his occupation of the premises as tenant. If that is what the Legislature intended it would have been perfectly simple for the Legislature to add a proviso in words such as:

"Provided that where the tenant has paid less than the total of eight years rent over the period immediately preceding the date of the application the amount of compensation to be awarded shall not be less than the total rent paid by the tenant".

For all these reasons I direct that the matter be referred back to the Board for it to make an award on the basis that the rent *i.e.* the total amount paid by the plaintiff to the defendants in consideration of the enjoyment of the said premises let to him was $332.33 and not $100 per month. The plaintiff is entitled to the costs of this application.

Order accordingly.

Solicitors: *Shook Lin & Bok; Chung & Co.*

KEPPEL BUS CO. LTD. v. SA'AD BIN AHMAD

[C.A. (Wee Chong Jin C.J., Chua and Tan Ah Tah JJ.)

July 31, 1972]

[Singapore — Civil Appeal No. 14 of 1971]

Master and Servant — Vicarious liability — Assault by servant in course of employment — Liability of master.

Damages — Eye — Loss of sight.

This was an appeal against the decision of the learned trial judge who awarded the respondent/plaintiff $20,290 damages for personal injuries and consequent loss and expense, caused by a bus conductor of the appellant company.

The respondent, while travelling as a fare paying passenger on a bus operated by the appellants, was struck on the left eye with a ticket punch by the bus conductor. He sued the appellants and the bus conductor for damages.

The appellants admitted employing the bus conductor, but denied liability on the ground that the assault was not within the scope of the bus conductor's authority and was an independent act unnconnected with his employment. Alternatively, the appellants pleaded *volenti non fit injuria*, alleging that the injury was caused by the bus conductor in the course of defending himself.

The learned trial judge found for the respondent. The appellants contended, *inter alia*, that the judgment was against the weight of the evidence.

Held, dismissing the appeal: (1) on the question of assault there was sufficient evidence to support the learned trial judge's findings;

(2) on the question of vicarious liability, there was sufficient evidence for the trial judge to conclude that the bus conductor, in hitting the respondent on the eye, was acting in the course of his employment. In the result, the appellants had been rightly held to be vicariously liable for the assault committed by the conductor.

Observations on principles which should guide an appellate court where the trial court has made wrong findings of primary facts.

Cases referred to:-

(1) *Hontestroom Case* [1927] A.C. 37 at p. 40.

(2) *Canadian Pacific Railway Co.* v. *Lockhart* [1942] A.C. 591 at p. 599.

COURT OF APPEAL.

K. E. Hilborne for the appellants.

H. E. Cashin for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the court): The respondent, Sa'ad bin Ahmad, while travelling as a fare paying passenger on a bus operated by the appellants, Keppel Bus Co. Ltd., was struck on

the left eye with a ticket punch by the bus conductor. He sued the appellants and the bus conductor for damages for personal injuries and consequent loss and expense caused by this assault and battery.

The bus conductor conducted his own defence and in his statement of defence claimed that the injury caused to the respondent was accidental and was caused while defending himself from a blow by the respondent. The appellants, while admitting they employed the bus conductor, denied liability on the ground that the assault was not within the scope of the bus conductor's authority and was an independent act unconnected with his employment. Alternatively, the appellants pleaded *volenti non fit injuria,* alleging that the injury was caused by the bus conductor in the course of defending himself from a blow by the respondent.

At the conclusion of the trial, the trial judge gave judgment for the respondent against the appellants and the bus conductor and awarded the respondent $20,290 damages and costs. The appellants now appeal and as one of the grounds of appeal is that the judgment was against the weight of the evidence it is necessary to set out the facts in some detail.

The respondent said that as the bus was travelling along Jalan Ahmad Ibrahim towards Jurong he was seated nearer the rear portion on a seat next to the central aisle. A Malay woman who was seated two seats in front of him also next to the aisle wanted to alight and was told by the conductor in a harsh tone to wait near the door of the bus. On hearing this he told the conductor the woman might fall but the conductor resented this intrusion and abused him. By then the bus had stopped and the Malay woman had alighted. On being abused he got up from his seat, touched the conductor, who was standing in front of him, on the shoulder, and told the conductor not to abuse him. The conductor continued to abuse him with the same words of abuse and blows were exchanged. He was unable to remember who struck the first blow. Some of the passengers intervened and he sat down with the conductor still standing in front of him. When he was so seated something hard hit the sun glasses he was then wearing, breaking the glass over the left eye and a broken piece of the glass entered his left eye eventually causing him to lose the sight of that eye.

A passenger, Mohamed Daud, gave evidence for the respondent. Mohamed Daud said he was seated behind the respondent and heard a Malay woman telling the conductor she wanted to alight and the conductor telling her to go and wait by the door of the bus. He then heard the respondent, who was seated, telling the conductor, who was standing in front of the respondent, that it was dangerous to tell the woman passenger to wait by the door of the bus. The conductor asked the respondent what he wanted and the respondent replied he would report the conductor to his employers. Then, while the Malay woman was still seated the conductor threw a punch at the respondent which missed. Soon after, the bus stopped at a bus stop and the Malay woman alighted from the bus. After she had alighted Mohamed Daud heard the conductor abusing the respondent and saw them standing facing each other. Nothing happened between them and the respondent sat down. Then Mohamed Daud saw the conductor holding the ticket punch in his left hand and with his left hand hit the respondent on the left eye. In cross-examination Mohamed Daud said that when the conductor threw the first punch, using the right hand, the respondent retaliated and some blows were then exchanged which ended when some passengers intervened.

The bus conductor elected not to give evidence on his own behalf but was called as a witness for the appellants. He said that at the material time the bus was full and there were about ten standing passengers. The Malay woman was seated in the first row immediately behind the driver. He saw her raised hand, went up to her and told her if she wanted to alight to walk to the side of the entrance *cum* exit door as the bus was crowded. As she did not get up, he pressed the bell for the driver to stop the bus for her to get down and then he moved to the middle of the bus. Then the respondent walked up to him, stood in front of him and asked why he was chasing the female passenger out of the bus. He told the respondent he was teaching her how to get down from the bus and the respondent said he would lodge a complaint to which he replied he could do so and to mind his own business. Then the respondent aimed a punch at his face which he avoided and he in turn threw a punch which also missed. At that stage the passengers intervened and the bus stopped and the Malay woman alighted. He then gave the signal for the bus to proceed and went about his job of collecting fares and punching tickets. While he was at the middle portion of the bus collecting fares the respondent who was standing in front of him suddenly punched him on the left cheek and he hit back. He had the ticket punch in his right hand and it accidentally touched the respondent's spectacles. They struggled until the passengers again separated them. In cross-examination he admitted he shouted loudly at the female passenger because he was angry and because she had no ticket. He also admitted he was angry and rude to her and used bad language on the respondent who was seated near the female passenger.

In his grounds of decision the trial judge found the facts to be as follows: —

"On the day in question I find that the conductor spoke to the elderly Malay lady in a loud and rude manner. The plaintiff clearly took exception to this and that is why he questioned the conductor regarding this request to the Malay lady in the manner he had narrated in his evidence. The conductor resented this intervention by the plaintiff and an altercation developed followed with some exchange of blows. The passengers in the bus promptly intervened and separated the two. The plaintiff went back to his seat and the conductor began collecting fares from his passengers standing near the plaintiff and facing him then. He was then uttering abusive words in Chinese probably at the plaintiff and evidently not having cooled off from the earlier incident. The plaintiff stood up at this and asked him not to use abusive words and then sat down. It was as soon as the plaintiff sat down that the conductor hit him on his left eye with the ticket punch. Having seen and heard P.W.2 and his demonstration of how this punch was delivered I accept his evidence on this point. I find that this blow was delivered by the conductor when the plaintiff was seated. I find that there was only one scuffle between the two and only one intervention by the passengers as the plaintiff and

P.W.2 say and not two of each as stated by the conductor. I do not accept the conductor's version that he was struck by the plaintiff suddenly on his cheek and that it was after that that he got excited and hit back at the plaintiff and accidentally broke his glasses with the ticket punch. Any injury that the conductor received on his cheek was not caused in the manner suggested by the conductor. Having heard him give evidence I do not consider him to be a truthful witness. I do not accept his evidence that this ticket punch accidentally struck the plaintiff's glasses. I find the conductor hit the plaintiff with the ticket punch and even though he may not have intended such an injury to his eye he should have been aware that it was likely that such an injury was likely to be caused. He clearly knew what he was doing when he struck the plaintiff with the ticket punch."

It is contended on behalf of the appellants that the trial judge ought to have found the following facts, namely:

(i) That it was the plaintiff who aimed the first blow in the incident which led to his injury;

(ii) That the conductor received his injuries from a blow by the plaintiff;

(iii) That there was a distinct break between the first incident prior to the Malay lady passenger alighting from the bus and the second incident which occurred after she had alighted, and the conductor had resumed his collection of fares;

(iv) That the breaking of the plaintiff's spectacles was not deliberate but accidental and that the injuries sustained by him were not intentional but consequential upon the breaking of the spectacles.

The principles which an appellate tribunal ought to bear in mind when considering a complaint that the trial court has made wrong findings of primary facts have been stated by numerous authorities but it will be sufficient to cite a passage from Lord Sumner's opinion in the *Hontestroom* case[1] at page 40:

"Of course, there is jurisdiction to retry the case on the shorthand note, including in such retrial the appreciation of the relative values of the witnesses.... It is not, however, a mere matter of discretion to remember and take account of this fact; it is a matter of justice and of judicial obligation. None the less, not to have seen the witnesses puts appellate judges in a permanent position of disadvantage as against the trial judge, and, unless it can be shown that he has failed to use or has palpably misused his advantage, the higher court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case."

Bearing these principles in mind we are of the opinion, with regard to (i) that the trial judge's finding that the conductor struck the first blow ought not to be reversed and that it was amply supported by the evidence. With regard to (ii) it is immaterial whether or not the cheek injury suffered by the conductor was inflicted by the respondent. What is material is the finding that it was not caused in the manner suggested by the conductor and this is a finding of fact which is supported by the evidence. With regard to (iii) what is material is that after the break, the finding of the trial judge is that while the respondent was seated the conductor standing over him hit him on the eye with the left hand in which was the ticket punch. Finally, with regard to (iv) the trial judge was justified in rejecting the conductor's evidence that the breaking of the respondent's spectacles with the resultant eye injury was purely accidental.

Another ground of appeal argued before us is that on any view of the facts the trial judge ought to have held that the appellants were not vicariously liable because this was not a case of a servant doing something he was authorised to do albeit in a wrongful unauthorised manner but was a case of an assault outside the province of his duties perpetrated in the course of a private quarrel. The trial judge said the real question was whether the conductor when he hit the respondent was acting in the course of his employment and answered it in these words:

"I find that the conductor when he hit the plaintiff was acting in the course of his duties. He was then maintaining order amongst the passengers in the bus. He was in effect telling the plaintiff by his act not to interfere with him in his due performance of his duties. He may have acted in a very high handed manner but nonetheless I am of the opinion that he was acting in the due performance of his duties then.

A bus conductor's lot is quite often a very harassing one especially in a busy metropolis and particularly during peak hours of traffic. He is often, in the proper discharge of his duties, called upon to show qualities of patience, tolerance, tact and forbearance. In the course of his duties he will have to deal with all kinds of passengers.

Apart from collecting the appropriate fares from the passengers and seeing that they get in and alight from the bus properly he is also responsible for the maintenance of order in the bus and the general welfare of all the passengers. Bus companies should take good care to see that people with the wrong temperament are not employed by them in this capacity. Otherwise they may run the risk of having to meet situations such as this".

It is argued for the appellants that as the trial judge found there was a distinct gap in the events between the conductor and the respondent being separated by the passengers after the exchange of blows and the second incident when the conductor hit the respondent, the conductor's act which caused the eye injury was clearly outside the scope of his employment and not an unauthorised mode of doing an authorised act. It is conceded, however, that one of the duties of a bus conductor is the maintenance of order in the bus but it is submitted that the trial judge was wrong in holding that the conductor when he hit the respondent in the eye was then maintaining order in the bus.

The applicable law is not in dispute and is contained in a passage from *Salmond* on Torts cited with approval by the Privy Council in *Canadian Pacific Railway Co.* v. *Lockhart*[2] at page 599:

"It is clear that the master is responsible for acts actually authorized by him: for liability would exist in this case, even if the relation between the parties was merely one of agency, and not one of service at all. But a master, as opposed to the employer of an independent contractor, is liable even for acts which he has not authorized, provided they are so connected with acts which he has authorized that they may rightly be regarded as modes — although improper modes — of doing them. In other words, a master is responsible not merely for what he authorizes his servant to do, but also for the way in which he does it. On the other hand, if the unauthorized and wrongful act of the servant is not so connected with the authorized act as to be a mode of doing it, but is an independent act, the master is not responsible: for in such a case the servant is not acting in the course of his employment, but has gone outside of it."

Numerous authorities, English, Australian. New Zealand and Canadian were cited during the hearing of the appeal but it is plain from these that the law to be applied is as above stated. The difficult ques-

tion in each of those cases is whether or not, on the facts, the act done by the servant, albeit an unauthorised and wrongful act, is an act done in the course of the servant's employment. If it is done in the course of the employment the master is vicariously liable and, if it is not, the master is not liable.

On the evidence before him the trial judge found that although there was a distinct gap, as stated above, the lapse of time between the two incidents was so very short that for all intents and purposes the whole incident should be considered as one continuous event. This finding, which is a matter for the trial judge, disposes of the contention that the eye injury was caused by the conductor in the course of a private quarrel.

In our judgment there was sufficient evidence for the trial judge to come to the conclusion that the conductor in hitting the respondent on the eye was acting in the course of his employment albeit acting in a very high-handed manner. In our opinion on the facts of the present case the appellants have been rightly held to be vicariously liable for the assault committed by the conductor and we would accordingly dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Murphy & Dunbar.*

LAWRENCE AU POH WENG & ANOR. v. ANNIE TAN HUAY LIAN

[O.C.J. (Winslow J.) August 29, 1972]

[Singapore — Originating Summons No. 1 of 1972]

Practice and Procedure — Declaration — Jurisdiction of court — Application for bare declaration of marital status — R.S.C. 1970, O. 15 r. 16 — Ambit of rule — Costs.

The plaintiffs in this case, by originating summons, sought for two declarations regarding their marital status: "(1) a declaration that the first plaintiff is not married to the defendant; (2) a declaration that the first plaintiff is married to the second plaintiff;" followed by a claim for further or other relief and for provision as to the costs of the application. The defendant counterclaimed a declaration that she was the lawful wife of the first plaintiff.

The first plaintiff filed affidavits to show that he was not married to the defendant and that he was, in fact, married to the second plaintiff. The defendant filed affidavits to show that she was, in fact, married to the first plaintiff and was so married in Djakarta on which the plaintiffs relied to prove their marriage.

Held, dismissing the application: (1) the court had no jurisdiction to make the declarations asked for either by the plaintiffs or by the defendant;

(2) in all the circumstances of this case, the parties should bear their own costs.

Cases referred to:-

(1) *Woyno* v. *Woyno* [1960] 2 All E.R. 879.
(2) *Aldrich* v. *Attorney-General* [1968] 1 All E.R. 345 at 349.
(3) *Garthwaite* v. *Garthwaite* [1964] 2 All E.R. 233 at 239.
(4) *Guaranty Trust Co. of New York* v. *Hannay & Co.* [1915] 2 K.B. 536.
(5) *Re Lee Gee Chong, deceased* [1965] 1 M.L.J. 102.
(6) *Hanson* v. *Radcliffe* [1922] 2 Ch. 507.
(7) *Har-Shefi* v. *Har-Shefi* [1953] 1 All E.R. 783.
(8) *Kassim* v. *Kassim* [1962] P. 224.
(9) *Lee* v. *Lau* [1964] 2 All E.R. 248.
(10) *Collett* v. *Collett* [1967] 2 All E.R. 426.
(11) *In re Sir Lindsay Parkinson & Co. Ltd. Settlement Trusts* [1965] 1 W.L.R. 373.
(12) *Ibeneweka* v. *Egbuna* [1964] 1 W.L.R. 219 at 225.
(13) *Meyer* v. *Meyer* [1927] S.S.L.R. 1
(14) *Then Kang Chu* v. *Tan Kim Hoe* [1926] S.S.L.R. 1.

ORIGINATING SUMMONS.

Thio Su Mien for the plaintiff.

Tan Jin Hwee for the defendant.

Winslow J.: By this originating summons as amended on 15th March 1972 the plaintiffs claim two declarations as follows: —

(1) a declaration that the first plaintiff is not married to the defendant;

(2) a declaration that the first plaintiff is married to the second plaintiff;

followed by a claim for further or other relief and for provision as to the costs of the application.

This summons was served on the defendant who entered an appearance and a number of affidavits have been filed by and on behalf of the various parties. On the one hand, the first plaintiff has filed affidavits to show that he is not married to the defendant and that he is, in fact, married to the second plaintiff, whilst on the other hand the defendant has filed affidavits to show that she is, in fact, married to the first plaintiff and was so married at the time when he went through the form of marriage in Djakarta on which the plaintiffs rely to prove their marriage.

The undisputed facts are as follows: —

(1) in or about 1942, the defendant who was then the wife, according to Chinese customary rites, of Ang Ann Lian left her husband with the three children of their marriage to live with the first plaintiff;

(2) the marriage between the defendant and Ang Ann Lian was not dissolved. The marriage took place in 1930 and they became separated in 1939;

(3) from the commencement of cohabitation between the first plaintiff and the defendant, the defendant was introduced to their friends as Mrs. Au, *i.e.* as the wife of the first plaintiff;

(4) in August, 1956 Ang Ann Lian died and the defendant filed a caveat declaring her interest in his estate as his lawful widow;

(5) after August, 1956 the first plaintiff and the defendant continued to cohabit until 16th December, 1962 when he severed all relationship with her and proceeded to Indonesia where he married the second plaintiff at the Registry of Marriages in Djakarta on 28th December, 1962, *i.e.* in a matter of about a mere 12 days after leaving the defendant;

(6) it is undisputed that the first plaintiff and the defendant had a child, a girl named Vivian Au, who was born to their union in 1950. This girl unfortunately died in 1966.